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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL DUNSMORE, et al., on behalf
of themselves and all others similarly
situated,

Plaintiffs,

v.

SAN DIEGO COUNTY SHERIFF'S
DEPARTMENT, et al.,

Defendants.

Case No.: 20-cv-00406-AJB-DDL

**REPORT AND
RECOMMENDATION FOR
ORDER DENYING REQUEST TO
PRESENT A CLAIM**

[Dkt. No. 280]

Before the Court is nonparty Pedro Rodriguez’s (“Rodriguez”) “Federal Rule
of Civ[il] Procedure 23(d) Request to Present [a] Claim” (the “Request”). Dkt. No.
280. The Court construes Rodriguez’s Request as a renewed motion to intervene,
and, for the reasons stated below, **RECOMMENDS** that the Request be **DENIED**.

I.
BACKGROUND

A. The Class Plaintiffs’ Claims and Relevant Procedural History

The District Court and the parties are familiar with the facts and legal claims
at issue in this case. Briefly stated, through this putative class action, Plaintiffs
bring claims “on behalf of all adults who are now, or will be in the future,

1 incarcerated in any of the San Diego County Jail facilities” for violations of their
2 civil and other rights. *See generally* Plaintiffs’ Third Amended Complaint (“TAC”),
3 Dkt. No. 231. Among Plaintiffs’ claims is that the County’s jail facilities are not
4 accessible to disabled incarcerated persons, as required by the Americans with
5 Disabilities Act (the “ADA”).

6 On April 27, 2023, the District Court denied Defendants’ motion to dismiss
7 the TAC in part. Dkt. No. 287. Pursuant to the District Court’s order, many of
8 Plaintiffs’ claims, including those calling for improved compliance with the ADA in
9 the County’s jail facilities, will proceed. *See generally id.*

10 Plaintiffs have also moved the District Court for a preliminary injunction and
11 provisional class certification. Dkt. 281. By that motion, Plaintiffs seek an order
12 “enjoining Defendants’ ADA violations” and provisional certification of a class of
13 incarcerated persons with disabilities. *See* Dkt. No. 281-1 at 28, 29. The District
14 Court has scheduled a hearing on the motion for June 29, 2023.

15 **B. Rodriguez’s First Motion to Intervene**

16 On June 30, 2022, Rodriguez, proceeding without counsel, filed a “Motion to
17 Intervene, Present Claims and Come Into the Action [Under] F.R.C.P. 23(d).” Dkt.
18 No. 183. Rodriguez represented that he “is a disabled prisoner” who has been
19 detained in the County’s Central Jail since 2014. *Id.* at 1, 5. He moved to intervene
20 on the basis that “[his] interests may not be fairly represented” in the action. *Id.* at
21 1. The District Court denied Rodriguez’s motion, finding that although Rodriguez
22 had an interest in the action, his interests were fairly represented by other parties
23 in the action and further that his intervention would unnecessarily disrupt the
24 action. *See* Dkt. No. 251 at 4-5.

25 **C. Rodriguez’s Request to Present a Claim**

26 In the Request now before the Court, Rodriguez – again proceeding without
27 counsel – states he is “a disable[d] prisoner of Module 5C.” Dkt. No. 280 at 1.
28 Rodriguez further states that on behalf of himself and other disabled inmates, he

1 demanded that Module 5C “be made ADA compliant” but that his complaints have
2 been ignored. *Id.* at 2. Specifically, Rodriguez complains that the bunks in Module
3 5C are unsafe, that the tables in 5C cannot accommodate inmates in wheelchairs,
4 that the inmates in Module 5C have not had adequate access to showers, and that
5 the lack of call boxes and obscured windows present a safety hazard for inmates
6 “in case of emergency.” *Id.* at 2. Rodriguez asserts that jail personnel “disregard[]”
7 these “admitted ADA violations” and asks the Court to “notice” the “insufferable
8 conditions” in Module 5C. *Id.* at 3.¹

9
10 **II.**

11 **LEGAL STANDARDS**

12 Rodriguez makes his request “pursuant to Federal Rule[] of Civ[il] Procedure
13 23(d)(1)(B)(3). *Id.* at 1. As the District Court has previously explained, Rule 23
14 does not permit intervention. See Dkt. No. 251 at 2 n.1. The Court therefore
15 evaluates the Motion pursuant to Rule 24.

16 “Under Rule 24, a stranger to a lawsuit may intervene ‘of right’ where (1) a
17 federal statute gives the would-be intervenor an ‘unconditional right’ to intervene
18 in the suit, or (2) letting the lawsuit proceed without that person could imperil some
19 cognizable interest of his.” *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., &*
20 *Prod. Liab. Litig.*, 894 F.3d 1030, 1037 (9th Cir. 2018); see also Fed. R. Civ. P.
21 24(a). The requirements for mandatory intervention under Rule 24(a) are not met
22 where the current parties adequately represent the intervenor’s rights. See Fed.
23 R. Civ. P. 24(a)(2) (stating that the Court must allow intervention by one who
24 “claims an interest” in the action “*unless existing parties adequately represent that*
25 *interest*”) (emphasis added).

26
27 ¹ Throughout this Order, the Court addresses only Rodriguez’s individual claims and interests. As the District Court
28 has explained, Rodriguez may not represent the class; nor may he represent the interests of any other person pro
se. See Dkt. No. 251 at 4 (explaining that pro se prisoner plaintiffs may not represent a class in a class action)
(citations omitted); CivLR 83.3 (providing that “[o]nly natural persons representing their *individual interests* . . . may
appear in court without representation”) (emphasis added).

1 Where intervention of right is not warranted, the Court may nevertheless
2 allow intervention pursuant to Rule 24(b) where the movant “has a claim or defense
3 that shares with the main action a common question of law or fact.” Fed. R. Civ.
4 P. 24(b). “Permissive intervention is committed to the [the Court’s] broad discretion
5 . . .” *Orange Cnty. v. Air California*, 799 F.2d 535, 539 (9th Cir. 1986).

6 III.

7 **DISCUSSION**

8 As is relevant to Rodriguez’s motion, Plaintiffs allege in the TAC that
9 Defendants “fail[] to ensure that incarcerated people with disabilities have equal
10 access to all programs and services offered at the Jail[,] . . . fail to ensure that
11 people with disabilities are housed in units and are assigned to beds that are
12 accessible and safe[,] . . . [and] fail[] to adequately train staff to house people with
13 disabilities in adequate and safe housing.” Dkt. No. 231 at 125. Plaintiffs therefore
14 seek:

15 declaratory and injunctive relief to remedy . . . Defendants’ systemic
16 and willful discrimination against incarcerated people with disabilities,
17 and failure to provide reasonable accommodations to incarcerated
18 people with disabilities in programs, services and activities;

18 * * *

19 [and] declaratory and injunctive relief under the United States and
20 Deliberate indifference to their failure to ensure the safety and security
of incarcerated people.

21 *Id.* at 14-15. Plaintiffs seek this relief “on behalf of a subclass of all qualified
22 individuals with a disability . . . who are now, or will be in the future, incarcerated
23 in San Diego County Jail facilities.” *Id.* at 202. Plaintiffs assert the members of
24 this subclass are “at risk of harm” from Defendants’ failure to provide accessible
25 and safe accommodations. *Id.*

26 These assertions are repeated in Plaintiffs’ motion for a preliminary
27 injunction, filed on April 25, 2023. See *generally* Dkt. No. 281. As in the TAC,
28 Plaintiffs assert that Defendants “fail[] to ensure people with mobility disabilities

1 have safe and accessible places to sleep, toilet, and shower.” Dkt. No. 281-1 at
2 8. On behalf of all individuals with disabilities incarcerated in San Diego County
3 jails now or in the future, Plaintiffs ask the Court to “require Defendants to produce
4 and implement a plan for timely . . . ensuring that people with mobility disabilities
5 are housed in ADA-compliant units/cells and remedying the lack of 2010 ADAS-
6 compliant sleeping, toileting, and showering facilities, including specific, staged
7 deadlines for renovations.” *Id.* at 29.

8 Rodriguez seeks “redress” for conditions at Central Jail, where he is currently
9 incarcerated, that make the facility inaccessible and unsafe to him as a disabled
10 person. Dkt. No. 280 at 3. Rodriguez appears to be a member of the “Incarcerated
11 Persons with Disabilities” subclass as it is defined in the TAC. See Dkt. No. 231
12 at 202. The “redress” he seeks is subsumed in Plaintiffs’ motion for a preliminary
13 injunction, seeking an order from the District Court requiring Defendants to “stop
14 placing incarcerated people with mobility disabilities in inaccessible housing” and
15 to complete “[a]ll renovations and changes required to make accessible housing
16 available to all incarcerated people with mobility disabilities” within one year of
17 entry of the order. See Dkt. No. 281-2 at 32.

18 The Court concludes that Rodriguez and Plaintiffs “have the same ultimate
19 objective,” triggering a presumption that Rodriguez’s interests are already
20 adequately represented by Plaintiffs in this action. *Arakaki v. Cayetano*, 324 F.3d
21 1078, 1086 (9th Cir. 2003), *as amended* (May 13, 2003); *see also Perry v.*
22 *Proposition 8 Off. Proponents*, 587 F.3d 947, 951 (9th Cir. 2009) (stating that a
23 “presumption of adequate representation applies” when there is an “identity of
24 interests” between the intervenor and the current parties). Where such a
25 presumption arises, “intervenor can rebut that presumption only with a ‘compelling
26 showing’” that the current parties do not adequately represent his interests. See
27 *id.* (citation omitted). Even construing Rodriguez’s Request liberally, *see Erickson*
28 *v. Pardus*, 551 U.S. 89, 94 (2007) (“A document filed *pro se* is ‘to be liberally

1 construed'. . .”), the Court further finds that Rodriguez has not made the required
2 showing that Plaintiffs’ representation has been inadequate. Because Plaintiffs
3 adequately represent Rodriguez’s interests, he may not intervene in the action as
4 a matter of right. Fed. R. Civ. P. 24(a); *see also Arakaki*, 324 F.3d at 1086 (stating
5 that “intervention is improper” where the intervenor’s “interests are adequately
6 represented by existing parties”).

7 The Court further finds that permissive intervention pursuant to Rule 24(b) is
8 unwarranted. Although Rodriguez’s claim for “redress” shares a common legal
9 and factual basis with Plaintiffs’ claims, the identity of interests between Rodriguez
10 and Plaintiffs is sufficient reason for the District Court to deny Rodriguez’s
11 Request. *See Perry*, 587 F.3d at 955-56 (collecting cases); *see also Miracle v.*
12 *Hobbs*, 333 F.R.D. 151, 156 (D. Ariz. 2019) (denying permissive intervention
13 where the proposed intervenors’ “interests [were] aligned with those of [the]
14 [d]efendant” and the proposed intervenors “fail[ed] to demonstrate that
15 [d]efendant’s defense . . . ha[d] thus far been inadequate”).

16 The Court has also considered whether permitting Rodriguez to intervene
17 would “unduly delay or prejudice the original parties and . . . whether judicial
18 economy favors intervention.” *Miracle*, 333 F.R.D. at 156; *see also* Fed. R. Civ. P.
19 24(b)(3) (stating that the court must consider delay and prejudice when
20 determining whether to permit intervention). There have been significant
21 developments in this case in the last six months, including Plaintiffs’ motion
22 seeking tangible changes to the County’s jail facilities and extensive discovery and
23 settlement efforts by all parties. These activities are likely to be delayed and
24 complicated by Rodriguez’s entry into the suit, to the detriment of the existing
25 parties. For the same reasons, Rodriguez’s entry into the action would also not
26 serve judicial economy. Given Plaintiffs’ and their counsel’s demonstrated
27 willingness and ability to zealously pursue relief on behalf of the class, the Court
28 finds Rodriguez’s intervention is neither necessary nor beneficial to the resolution

1 of the action. *Accord Perry*, 587 F.3d at 956 (denying motion to intervene where
2 intervenor’s participation was “unnecessary” and existing parties were “capable”
3 of moving the litigation forward).

4 **IV.**

5 **CONCLUSION**

6 For the reasons stated above, the Court finds that Rodriguez is not entitled
7 to intervene as of right, and that permitting him to intervene as a matter of
8 discretion would create delay and unduly prejudice the current parties. The
9 undersigned therefore **RECOMMENDS** that the District Court **DENY** Rodriguez’s
10 renewed motion to intervene [Dkt. No. 280]. The undersigned respectfully submits
11 this Report and Recommendation to the Honorable Anthony J. Battaglia, United
12 States District Judge, pursuant to 28 U.S.C. § 636(b)(1) and Civil Local Rule 72.3.
13 The Court requests the Clerk of the Court mail a copy of this Report and
14 Recommendation to:

15 Pedro Rodriguez, No. 14745493
16 San Diego Central Jail
17 1173 Front Street, 5C-Cell 8
San Diego, CA 92101

18 **IT IS HEREBY ORDERED** that any objection to this Report and
19 Recommendation must be filed with the Court and served on all parties by
20 **July 11, 2023**. The document should be titled “Objections to Report and
21 Recommendation.” Failure to timely object may result in a waiver of the right to
22 raise objections on appeal. See *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir.
23 1998).

24 **IT IS SO ORDERED.**

25 Dated: June 20, 2023

26 

27 Hon. David D. Leshner
28 United States Magistrate Judge